

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HELENI THAYRE, *Plaintiff*,

v.

TOWN OF BROOKLINE and JESSE
GELLER, JOHANNA SCHNEIDER, MARK
ZUROFF, KATE POVERMAN, LARK
PALERMO, and RANDOLPH
MEIKLEJOHN, as they are members of the
BROOKLINE ZONING BOARD OF
APPEALS, DANIEL BENNETT as Building
Commissioner for the TOWN OF
BROOKLINE, JOSEPH BRAGA as Deputy
Building Commissioner, and ROBERT
DOUGAN as Building Inspector, *Defendants*.

Civil Action No. 1:20-cv-10510

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO CERTIFY QUESTION
TO MASSACHUSETTS SUPREME JUDICIAL COURT**

Defendants respectfully submit this Opposition to Plaintiff Heleni Thayre's Motion to Certify Question to Massachusetts Supreme Judicial Court (the "Motion"). Plaintiff appears to have filed the motion in further opposition to the Defendants' pending motions to dismiss pendant state constitutional claims that are parallel to and governed by principles similar to her federal constitutional claims. Plaintiff's apparent effort to further delay the disposition of Defendant's pending motions to dismiss is unavailing.

The First Circuit has stated that it is appropriate for the federal courts to deny a request to certify a question of state law to the Massachusetts Supreme Judicial Court ("SJC") pursuant to SJC Rule 1:03 when "'the course [the] state court[] would take is reasonably clear.'" *Shaulis v. Nordstrom, Inc.*, 865 F.3d 1, 6 n.3 (2017) (quoting *Easthampton Sav. Bank v. City of Springfield*, 736 F.3d 46, 50 (1st Cir. 2013)). "The fact '[t]hat a legal issue is close or difficult is not normally enough to warrant certification,' since otherwise cases involving state law 'would

regularly require appellate proceedings in two courts.’” *Id.* (citing *Boston Gas Co. v. Century Indem. Co.*, 529 F.3d 8, 15 (1st Cir. 2008)).

Here, the State law governing Plaintiff’s State constitutional claims is neither close nor difficult. Both the Defendants’ memorandum in support of their motions to dismiss [Dkt # 6] and Plaintiff’s Opposition to the motions [Dkt # 21] cite Massachusetts governing law that closely tracks the federal constitutional analysis. The course a State court would take is clear.

For these reasons and the principles set forth in the Defendants’ memorandum in support of their motions to dismiss (which the Defendants incorporate herein), the Defendants respectfully ask the Court to deny the Motion.

Respectfully submitted,
DEFENDANTS TOWN OF BROOKLINE, JESSE
GELLER, JOHANNA SCHNEIDER, MARK
ZUROFF, KATE POVERMAN, LARK
PALERMO, and RANDOLPH MEIKLEJOHN, as
they are members of the BROOKLINE ZONING
BOARD OF APPEALS, DANIEL BENNETT as
Building Commissioner for the TOWN OF
BROOKLINE, JOSEPH BRAGA as Deputy
Building Commissioner, and ROBERT DOUGAN
as Building Inspector,

By their attorneys:

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Date: February 18, 2021

CERTIFICATE OF SERVICE

I, Patricia Correa, hereby certify that on the above-referenced date, this document, filed through the ECF system, was sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and was sent by U.S. Mail, postage prepaid, to all non-registered participants who have appeared in this case.

/s/ Patricia Correa

Patricia Correa